

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 084603

O R 082345Z FEB 75

FM AMEMBASSY QUITO

TO SECSTATE WASHDC IMMEDIATE 4384

INFO AMCONSUL GUAYAQUIL

C O N F I D E N T I A L SECTION 1 OF 2 QUITO 0984

EXDIS

E.O. 11652: GDS

TAGS: PFOR, EFIS, PLOS, EC, US

SUBJECT: SEIZURE OF US FISHING BOATS: LOOKING TO THE LONGER TERM

REF: QUITO 5664, OCTOBER 31, 1973

1. SUMMARY: THE CURRENT PREDICAMENT OF THE US TUNA BOATS IN ECUADOR REQUIRES A PROMPT EXAMINATION OF WHAT, IF ANYTHING, OUR INDUSTRY CAN DO TO AVOID FURTHER DETENTIONS AND ENSURE ITS REASONALBE ACCESS TO THE TUNA FISHERY OFF ECUADOREAN COASTS. ECUADOR LIKE BRAZIL AND A NUMBER OF OTHER COUNTRIES, HAS BEEN MOVING OVER THE YEARS TOWARD THE CONCEPT OF A 200-MILE EXCLUSIVE FISHERY. BEGINNING AS FAR BACK AS 1952, IT HAS PROCEEDED TO REFINE ITS LEGISLATION, UNTIL DECEMBER 1974 WHEN THE REGULATIONS CURRENTLY IN EFFECT WERE PROMULGATED. THEY PROVIDE FOR A 200-MILE ZONE IN WHICH FOREIGN VESSELS MUST PURCHASE ECUADOREAN LICENSES; RESTRICT OPERATIONS TO VESSELS UNDER 600 NET REGISTERED TONS; AND SET ASIDE A 40 MILE COASTAL ZONE AS A COMPLETELY EXCLUSIVE PRESERVE FOR ECUADOREAN NATIONAL, SUBSISTENCE, AND ARTESAN FISHERMEN. THE ECUADOREANS HAVE REPEATEDLY MADE CLEAR THEIR INTENT TO ENFORCE THEIR LAWS, AND THERE IS NO EVIDENCE THAT THEY WILL YIELD TO PRESSURE -- SHORT OF PURE FORCE -- TO MODIFY THEM. THE FACT THAT THE US SENATE, IN ITS LAST SESSION, APPROVED A MODIFIED 200-MILE ECONOMIC RESOURCE ZONE PROPOSAL, AND THE RECENT RENEWAL OF THE US CONVENTION WITH BRAZIL

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ACKNOWLEDGING A 200-MILE "CONSERVATION" ZONE FOR SHRIMPERS,

IS TAKEN HERE AS PROOF OF THE RECTITUDE OF THE ECUADOREAN POSITION. THE QUESTION FOR THE US TUNA INDUSTRY IS, THEREFORE, WHAT CAN USEFULLY BE DONE TO PRECLUDE THE SEIZURES AND HARASSMENT THEY HAVE EXPERIENCED, AND AT THE SAME TIME, GIVE THEM AN ECONOMICALLY REMUNERATIVE ACCESS TO THE FISHERY OFF ECUADOR'S COAST. EMBASSY RECOMMENDS THAT TO ACHIEVE THIS US FISHING VESSELS COMPLY WITH PROVISIONS OF ECUADOREAN LAW REQUIRING LICENSES AND, FOR VESSELS LARGER THAN 600 NRT, PURSUE THE POSSIBILITY OF ASSOCIATION CONTRACTS WITH THE ECUADOREAN STATE FISHING CORPORATION (EPNA). ANY OTHER COURSE OF ACTION RISKS, WE BELIEVE, THE EVENTUAL COMPLETE EXCLUSION OF US VESSELS FROM ECUADOR'S FISHERY. END SUMMARY.

2. ECUADOR HAS BEEN MOVING TOWARDS AN EXCLUSIVE FISHERY FOR OVER 20 YEARS, SINCE THE 1952 DECLARATION BY CHILE, PERU, AND ECUADOR ASSERTING JURISDICTION OFF THEIR COASTS TO THE 200-MILE LIMIT. THE US OBJECTED THEN AND SINCE ON THE GROUNDS THAT, IN THE ABSENCE OF AN INTERNATIONAL AGREEMENT ON EXTENSIONS OF SOVEREIGNTY BEYOND 3 MILES, ECUADOR'S (CHILE'S AND PERU'S) CLAIMS WERE INVALID. THIS DIFFERENCE BETWEEN OUR APPROACH AND ECUADOR'S LED TO THE ARREST AND FINING OF MANY US FLAG FISHING VESSELS. FOREIGN VESSELS WISHING TO FISH HERE WERE, HOWEVER, GRANTED UNLIMITED ACCESS TO ECUADOR'S FISHERY IF THEY WERE WILLING TO BUY LICENSES.

3. IN DECEMBER 1972, THE NATURE OF THE PROBLEM CHANGED AS ECUADOR BEGAN TO SHIFT ITS FISHERIES POSITION FROM ONE OF UNLIMITED ISSUANCE OF LICENSES TO ONE BASED ON CONSERVATION AND DEVELOPMENT OF A LOCAL FISHING INDUSTRY. WE WERE NO LONGER FACED ONLY WITH THE PROBLEM OF HOW TO RETAIN OUR FISHERMEN'S ACCESS TO ECUADOREAN-CLAIMED WATERS WITHOUT COMPROMISING ESSENTIAL ELEMENTS OF NATIONAL POLICY, BUT NOW ALSO HOW TO AVOID THEIR COMPLETE EXCLUSION. ECUADOREAN FISHING LEGISLATION HAS PROGRESSIVELY TIGHTENED THE PROVISIONS AFFECTING FOREIGN VESSELS. IN APRIL, 1974, WE LEARNED OF PROPOSALS TO BAN LICENSES TO VESSELS OVER 500 NET REGISTERED TONS

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(QUITO 2877). WE PROTESTED TO BOTH THE FOREIGN OFFICE AND MINISTRY OF NATURAL RESOURCES, AND WERE TEMPORARILY SUCCESSFUL (QUITO 5077). BUT IN DECEMBER 1974 (QUITO 8555), WE LEARNED THAT A NEW DECREE HAD BEEN ISSUED THAT SET ASIDE AN EXCLUSIVE FISHING ZONE 40 MILES FROM ECUADOR'S COAST AND LIMITED THE SIZE OF FOREIGN VESSELS PERMITTED TO FISH IN THE REMAINING 160 MILES TO 600 NET REGISTERED TONS. OUR PROTESTS WERE TO NO

AVAIL, AND THE DECREE BECAME EFFECTIVE ON 1 JANUARY 1975.

4. THERE HAVE BEEN RECURRENT ATTEMPTS TO SOLVE THE FISHERIES DISPUTE WITH ECUADOR. THE 1950'S AND 60'S SAW EFFORTS TO RESOLVE THE PROBLEM IN A 4-POWER CONTEXT ALONG WITH CHILE, PERU AND OURSELVES. ABORTIVE BILATERAL TALKS WERE HELD AGAIN DURING THE COURSE OF 1971 AND 1972, THE LATTER UNDER THE AUSPICES OF NSDM 147 OF JANUARY 4, 1972. IN 1973 THIS EMBASSY TWICE PROPOSED NEW APPROACHES TO SOLVING THE FISHERIES PROBLEM. THE FIRST PROPOSAL (QUITO 2525 OF MAY 14, 1973) WAS BASED ESSENTIALLY ON A CONSERVATION APPROACH. THE SECOND (QUITO 5664 OF OCTOBER 31, 1973) COMBINED ELEMENTS OF A CONSERVATION APPROACH WITH THE CONCEPT OF GRANTING FOREIGN-FLAG VESSELS UNDER ASSOCIATION CONTRACTS WITH ECUADOREAN FIRMS TREATMENT EQUAL TO THAT ACCORDED ECUADOREAN-FLAG VESSELS.

5. THIS LATTER PROPOSAL GAINED SOME MOMENTUM IN DECEMBER 1973 WITH THE VISIT TO QUITO OF S/FW REPRESENTATIVE WILL VAN CAMPEN. OUR PROPOSAL WAS MODIFIED SLIGHTLY AS A RESULT OF HIS VISIT; THE IDEA OF A GOVERNMENT-TO-GOVERNMENT CONSERVATION AGREEMENT (MORE OR LESS ALONG THE BRAZILIAN MODEL) WAS DROPPED AND ATTENTION WAS FOCUSED ON THE CONCEPT OF DIRECT INDUSTRY-TO-INDUSTRY ASSOCIATION TALKS. GOVERNMENT-TO-GOVERNMENT TALKS ON CONSERVATION WERE CONSIDERED TO BE IMPRACTICABLE ON EVE OF THE LOS CONFERENCE, AND BESIDES, SUCH TALKS HAD HAD A RATHER POOR TRACK RECORD WITH ECUADOR ANYWAY.

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INFO OCT-01 ISO-00 NSCE-00 SSO-00 /026 W

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6. INITIAL RESPONSE ON BOTH US AND GOE SIDES TO THE ASSOCIATION CONCEPT WAS GOOD. ON JANUARY 10, 1974, NATURAL RESOURCES MINISTER JARRIN SUGGESTED THE ASSOCIATION CONCEPT TO AMBASSADOR AND VISITING CONGRESSMAN DANTE FASCELL (QUITO A-9). ON JANUARY 20, WHEN NOTIFIED OF THE LIFTING OF FMS SANCTIONS BY AMBASSADOR, PRESIDENT RODRIGUEZ HIMSELF RESPONDED POSITIVELY TO PROPOSAL FOR RENEWED FISHERIES TALKS ON INDUSTRY-TO-INDUSTRY BASIS (QUITO 639). BOTH ACTING FONMIN VALDEZ AND PRESIDENT RODRIGUEZ IN MARCH GAVE ASSISTANT SECRETARY KUBISCH THE CLEAR IMPRESSION THAT THEY WERE PREPARED TO PROCEED WITH THE ASSOCIATION IDEA, THE PRESIDENT GOING SO FAR AS TO COMPLIMENT HIM ON THE "DELICACY" OF OUR RECENT APPROACH TO THE FISHERIES PROBLEM. HOWEVER, LATER IN MARCH, MATTERS CAME TO A SCREECHING HALT WHEN FONMIN ACTING SUBSECRETARY PONCE INSISTED THAT WE HAD FIRST TO DISCUSS MIGRATORY SPECIES ON A GOVERNMENT-TO-GOVERNMENT BASIS BEFORE INDUSTRY-TO-INDUSTRY TALKS ON ASSOCIATION COULD BEGIN (QUITO 2028 AND 2102, MARCH, 1974).

7. MEANWHILE, IN US, THE ASSOCIATION CONCEOP WAS PURSUED WITH US INDUSTRY. ON JANUARY 17, 1974, WILL VAN CAMPEN OF S/FW HAD A LONG CONVERSATION WITH AUGUST FELANDO, OF THE AMERICAN TUNABOAT ASSOCIATION, IN WHICH THEY DISCUSSED THE POSSIBILITY OF AN AGREEMENT WHICH WOULD INVOLVE AN "OPEN PORT" CONCEPT FOR US BOATS TO USE ECUADOREAN

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FACILITIES: PROVIDE FOR OPTIONS FOR THE ECUADOREAN FISHING INDUSTRY TO PURCHASE A PERCENTAGE OF THE FISH CAUGHT BY AMERICAN BOATS AS HIGH AS PERHAPS 20,000 TONS (OR ABOUT 25 PERCENT OF THE CATCH); EMPLOYMENT OF ECUADOREANS ABOARD US BOATS AND POSSIBLE ARRANGEMENTS FOR THE SALE OF MODERN FISHING BOATS TO THE ECUADOREAN INDUSTRY; AND TREATMENT OF US BOATS PARTICIPATING IN THE ASSOCIATION AGREEMENT ON THE SAME BASIS AS ECUADOREAN BOATS -- I.E., WITHOUT RESTRICTIONS ON TONNAGE, AND INEXPENSIVE LICENSES.

8. AFTER AN INITIAL RELATIVELY FAVORABLE REACTION FROM THE SAN DIEGO TUNA FISHERMEN, ENTHUSIASM COOLED MARKEDLY. THE AMERICAN TUNABOAT OWNERS ASSOCIATION MADE REPEATEDLY CLEAR THAT IT FELT LITTLE INCENTIVE TO PUSH ACTIVELY AHEAD ON AN INDUSTRY-TO-INDUSTRY AGREEMENT: IN A MEETING WITH DEPARTMENT OFFICIALS ON APRIL 17, 1974; BY ITS REACTION TO THE PROPOSED VISIT TO SAN DIEGO OF CHIEF OF THE ECUADOREAN INDUSTRY

VICENTE TAMARIZ IN MAY 1974; AND BY THE RESPONSE FROM FELANDO, ROYAL AND CAREY IN CARACAS IN AUGUST 1974 TO THE IDEA OF TALKING TO ECUADOREAN OFFICIALS. THE FISHERMEN'S PROTECTIVE ACT GUARANTEED THEM REIMBURSEMENT FOR SEIZURES; FOR FINES THEY MIGHT HAVE TO PAY AND FOR LICENSES THEY WOULD SUBSEQUENTLY BE FORCED TO BUY AS PART OF THE COST OF FINES; FOR OPERATING LOSSES THEY MIGHT SUFFER; FOR UTILITIES AND OTHER COSTS THEY MIGHT RUN UP WHILE DETAINED IN PORT; AND FOR CONFISCATION OF THEIR CATCHES. THUS THERE APPEARED TO BE TOO MANY HAND-UPS ON BOTH SIDES FOR FRUITFUL TALKS TO MATERIALIZE AND, TEMPORARILY AT LEAST, IT SEEMED THAT THE MOMENT HAD PASSED TO PURSUE THIS AVENUE. WE SO REPORTED (QUITO 5566, 22 AUG 1974).

9. BUT WE HAVE FOUND FROM OUR MOST RECENT TALKS THAT THE ECUADOREANS HAVE NOT YET COMPLETELY GIVEN UP THE IDEA OF AN INDUSTRY-TO-INDUSTRY ASSOCIATION AGREEMENT, AND IT APPEARS THAT THIS IS THE ONE LOOPHOLE THAT OFFERS SOME POSSIBILITY OF A COMPROMISE WITH ECUADOR'S FISHING LAWS THAT WOULD ALLOW US FISHING BOATS ACCESS TO THE RESOURCES OFF ECUADOR'S COAST AND BRING TO AN END THE CONFIDENTIAL

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SEIZURES PROBLEM. SUBSECRETARY VALDEZ OF THE FOREIGN OFFICE TOLD AMBASSADOR FEBRUARY 5 THAT QUESTION OF ASSOCIATION TALKS WAS ENTIRELY OPEN AND THAT NOW INDEED WOULD BE A GOOD TIME TO TRY TO PUSH THE IDEA AGAIN. (QUITO 891, 6 FEB 1975). AND, EVENING OF 5 FEB 1975, GOE FISHERIES SUBSECRETARY RODRIGUEZ INFORMED ADCM AND CONGEN GUAYAQUIL THAT HE "FORESAW POSSIBILITY OF MEANINGFUL ASSOCIATION TALKS BETWEEN OUR RESPECTIVE INDUSTRIES IF US FISHERMEN WOULD START COMPLYING FULLY WITH EXISTING GOE FISHERIES LEGISLATION." (QUITO 898, 6 FEB 1975). THIS OCCURRED DURING A CONVERSATION IN WHICH HE INFORMED US THAT APPEALS ON THE FIRST FOUR SEIZED VESSELS WOULD BE DECIDED WITHIN THE WEEK; ALL FOUR APPEALS HAVE SINCE BEEN TURNED DOWN, AND THE MINISTRY OF FOREIGN AFFAIRS HAS SINCE ISSUED A PRESS RELEASE ANNOUNCING THREE VESSELS WHICH HAVE BOUGHT MATRICULAS AND/OR LICENSES, QUITO 960 AND WE HAVE BEEN HANDED A LIST OF 7 MORE BY THE DIRECTORATE GENERAL OF FISHERIES IN GUAYAQUIL.

10. EMBASSY BELIEVES THAT US INTERESTS WITH RESPECT TO FISHING DISPUTE ARE TWO-FOLD. END THE SEIZURES PROBLEM, AND TRY TO WORK OUT A MEANS OF ENSURING REASONABLE ACCESS BY OUR FISHERMEN TO ECUADOREAN FISHERY RESOURCES. THE ONLY PRACTICABLE MEANS TO THE FIRST OF THESE GOALS IS FOR AS MANY US VESSELS

AS INTEND TO FISH HERE TO COMPLY WITH ECUADOREAN LAW AND PURCHASE LICENSES -- AS AN INCREASING NUMBER OF THEM ARE ALREADY DOING. THE MEANS TO THE SECOND GOAL (ELIMINATION OF THE 40-MILE RESTRICTION AND ACCESS FOR OUR BOATS OVER 600 NRT) WOULD APPEAR TO BE TO WORK OUT, AS QUICKLY AS POSSIBLE, AN INDUSTRY-TO-INDUSTRY ARRANGEMENT BETWEEN THE SAN DIEGO TUNA FISHERMEN AND ECUADOREAN INDUSTRY REPS. THERE HAVE ALREADY BEEN SIGNS THAT THIS IS BOTH POSSIBLE AND PRACTICAL AND US INDUSTRY SHOULD TAKE PROMPT STEPS TO PURSUE THE MATTER ONCE THE PROBLEM OF THE PRESENTLY-SEIZED BOATS IS RESOLVED. USG SHOULD ASSIST IN WHATEVER WAY IT APPROPRIATELY CAN.

1. THE ALTERNATIVES TO SUCH AN ACCOMMODATION ARE, IN OUR VIEW, CONTINUED SEIZURES - AND THE CONTINUED FRICTION
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IN OUR RELATIONS THAT SUCH SEIZURES INEVITABLY IMPLY. APART FROM THE OVERALL POLICY IMPLICATIONS, THERE ARE PRACTICAL CONCERNS FOR OUR FISHERMEN AND CONGRESS. WITH ECUADOREAN FINES AND OTHER PENALTIES SUCH AS CONFISCATION OF CATCH GOING UP, THIS WILL EVENTUALLY PLACE STRAINS ON FUNDS AVAILABLE UNDER FPA. FINALLY, AND MOST IMPORTANT OF ALL TO OUR TUNA INTERESTS, THE LONGER WE FIND OURSELVES IN CONFRONTATION WITH ECUADOR ON THE ISSUE, THE MORE DAMAGE WILL BE DONE TO PROSPECTS FOR GUARANTEEING AT LEAST SOME ACCESS TO ECUADOR'S FISHERY BY NEGOTIATION. IN FACT, IF THE PRESENT SITUATION CONTINUES INTO ANOTHER TUNA SEASON, IT IS NOT INCONCEIVABLE THAT ECUADOR MIGHT EXCLUDE US ENTIRELY FROM ITS FISHERY AND SEEK ITS ASSOCIATION ARRANGEMENTS ELSEWHERE.
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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: FISHING INDUSTRY, SHIP DETENTION, TERRITORIAL WATERS, POLICIES
Control Number: n/a
Copy: SINGLE
Draft Date: 08 FEB 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975QUITO00984
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750047-0433
From: QUITO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750259/aaaacbno.tel
Line Count: 314
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: 75 QUITO 5664, 75 OCTOBER 31, 75 1973
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 09 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 SEP 2003 by WorrelSW>; APPROVED <06 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SEIZURE OF US FISHING BOATS: LOOKING TO THE LONGER TERM
TAGS: PFOR, EFIS, PLOS, EC, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006